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3
4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

6 * * *

7 LAKEISHA N. HOLLOWAY,

8 Plaintiff,

9 v.

10 LAKE'S CROSSING MENTAL HEALTH
11 CENTER, *et al.*,

12 Defendants.

Case No. 2:16-cv-2823-KJD-BNW

ORDER

13 Before the Court is defendants Lake's Crossing Center, Matthew Bowman, Louis
14 Orozco, Steven O'Brien, Kenny Sapoulou, Abby Mascareno, Eric Kellemeier, Debbie Lawson,
15 Silvario Mendoza, and Ronna Dillinger's ("Lake's Crossing defendants") partial Motion to
16 Dismiss (ECF No. 21) to which defendant Dr. H. Hale Henson joined (ECF No. 22). Also before
17 the Court is Dr. Henson's own Motion to Dismiss (ECF No. 24). Plaintiff Lakeisha Holloway
18 responded to both motions (ECF No. 27), and the defendants have replied (ECF Nos. 28, 29).
19 Holloway also seeks leave to amend her complaint (ECF No. 30) to which the defendants
20 responded (ECF Nos. 32, 33), but Holloway did not reply.

21 **I. Background**

22 Lakeisha Holloway brought this civil rights case under 42 U.S.C. § 1983 for alleged
23 constitutional violations during her time as a pretrial detainee at the Lake's Crossing Mental
24 Health Center. Lake's Crossing is a maximum-security psychiatric facility near Reno, Nevada. It
25 houses both male and female inmates and provides "comprehensive forensic mental health
26 services" to custodial defendants. See Lake's Crossing Center Overview,
27 http://dpbh.nv.gov/About/Overview/Lake_s_Crossing_Center_Overview/ (last visited Nov. 13,
28 2019). Holloway arrived at Lake's Crossing on April 14, 2016. At the time, Holloway was one of

1 about five female detainees compared to approximately fifty male detainees. Compl. 12, ECF
2 No. 8. Holloway claims that she was physically and sexually assaulted by male detainees during
3 her time at Lake's Crossing. She also claims that Lake's Crossing officials ignored her risk of
4 harm and retaliated against her for speaking out against the Lake's Crossing staff. Separately,
5 Holloway alleges that Dr. Henson provided constitutionally inadequate medical care during her
6 time at Lake's Crossing.

7 Holloway filed grievances with Lake's Crossing in July and August of 2016. When
8 nothing changed, she filed her first complaint. The Court screened that complaint and found that
9 Holloway failed to plead colorable claims for relief. Screening Order, ECF No. 4. It dismissed
10 the complaint but allowed Holloway to refile, which she did on February 28, 2018. See Amended
11 Compl., ECF No. 8. The Court screened that complaint and determined that Holloway pleaded
12 three colorable claims for relief. Though Holloway styled her claims differently, the Court
13 interpreted her facially valid claims as: (1) a claim for failure to protect under the Fourteenth
14 Amendment; (2) a claim for retaliation under the First Amendment; and (3) a claim for
15 inadequate medical care under the Fourteenth Amendment. Screening Order, ECF No. 11.¹

16 Although Holloway had multiple run-ins with male detainees, her trouble with the Lake's
17 Crossing staff began in June of 2016, after she was physically assaulted by inmate Michael Bell.
18 Compl. at 16.² Bell asked Holloway to be his "girlfriend," and when Holloway declined, Bell
19 "punched [her] in the mouth." Id. The assault occurred on the main floor of Lake's Crossing
20 around 8:00 p.m. Id. Defendants Matthew, Louis, John Doe, and their supervisor, Steven, were
21 the nightshift staff that evening, but they were nowhere to be found. Id. at 17. Defendant
22 Matthew told Holloway that they were understaffed and did not have the manpower to monitor
23

24 ¹ The Court's second screening order dismissed a verbal harassment claim with prejudice against other
25 Lake's Crossing detainees and an excessive force claim against Lake's Crossing staff without prejudice. It also
dismissed defendant Neighbors without prejudice because the complaint did not make any allegations against her.

26 ² Holloway's complaint includes numerous allegations of misconduct by male inmates against her and
27 other female inmates. See, e.g., Compl. at 13 (Holloway suffering verbal harassment by male inmate), 15 (female
28 inmate hit in the face with a radio by male inmate), 24 (male inmate threatened to beat a female inmate), 24–25
(female inmate hit in the face with a laundry bag by male inmate). The Court has advised Holloway that although
she has a right to bring claims on her own behalf, she does not have authority to pursue claims on behalf of others.
See Screening Order at 5 n.2.

1 the area where the assault occurred. Id. at 16–17. The staff had advance warning that inmate Bell
2 was violent because he had previously attacked defendant Matthew. Id. at 17. Yet, according to
3 Holloway, they allowed Bell, a male inmate, unsupervised access to Holloway, resulting in a
4 physical attack. Id.

5 Four days later, Holloway contacted the advocate hotline number, seeking help with the
6 conditions at Lake’s Crossing. Id. at 18. She also filed a grievance with Lake’s Crossing directly,
7 but things did not improve. Id. at 20. To the contrary, Holloway claims that Lake’s Crossing staff
8 began to retaliate against her for filing a grievance. In early July, Holloway’s social worker,
9 Vicki Erickson, her psychiatrist, Dr. Henson, and Lake’s Crossing Director, Tom Durante
10 decided to move Holloway to a room with camera surveillance. Id. at 21. When Holloway
11 questioned the move, Erickson told her it was because Holloway had reported that she was
12 “being abused and [that] people were coming into [her] room,” and that Holloway’s reporting
13 “was a problem.” Id. (internal citations omitted). The staff moved Holloway into the new room
14 over her objection, and Defendants Kenny, Abby, Eric, Debbie, and John Doe had to physically
15 force her into the room. Id.

16 Holloway’s situation continued to deteriorate. In early August, Holloway was sexually
17 assaulted by a male inmate. Around 8:30 p.m. on August 5, an inmate with the last name
18 “Walker” approached Holloway from behind while she used the community telephone. Without
19 warning, Walker removed his genitals and rubbed them against Holloway from behind. Id. at 25–
20 26. Holloway reported the assault to an on-duty officer, defendant “Seal.” Id. at 26. Seal,
21 however, did not discipline Walker or perform an investigation of any kind. In fact, Seal ignored
22 Holloway and “continued to play his chess game.” Id. After Seal refused to help Holloway, she
23 filed another grievance and was again met with staff retaliation. Holloway filed her second
24 grievance with Lake’s Crossing on August 8, 2016. Later that day, defendants Kennedy and
25 Abby refused to deliver Holloway’s personal mail. Holloway believes that Kennedy and Abby
26 purposely returned the mail to sender because Holloway renewed her grievance against them. Id.
27 at 26.

28 Shortly thereafter, Holloway began a court-ordered psychotic-drug regimen. Dr. Henson

1 oversaw the administration of the drug under the order. Dr. Henson started Holloway with 10
2 milligrams of the drug, which caused her to faint. Id. at 27. Holloway asked Dr. Henson if she
3 could start at a smaller dose and gradually increase the dosage until her body could acclimate.
4 Dr. Henson, bound by court order, refused. Aside from Holloway’s initial reaction to the
5 medication, she does not allege any lingering effects after her first dose.

6 More than a month passed without incident for Holloway, but in late September she
7 suffered another incident with a male inmate. Around midnight on September 27, a male inmate
8 named David Flores snuck into Holloway’s room while she was asleep. Holloway awoke to find
9 Flores touching her while propositioning her for sex. Id. at 27–28. Despite the multiple nightshift
10 officers on duty that night and the surveillance cameras in the ward, Flores was able to sneak
11 from his room into Holloway’s without being noticed. Holloway again complained to Lake’s
12 Crossing staff to no avail.

13 Holloway then filed her first complaint. Each of the defendants have now moved to
14 dismiss some or all of Holloway’s claims, and Holloway again moves to amend her complaint.

15 **II. Legal Standard**

16 The constitution guarantees indigent parties “meaningful access to the courts.” Bounds v.
17 Smith, 430 U.S. 817, 821–23 (1977). The Court understands that these parties’ pleadings may
18 lack the refinement of retained-counsel’s filings. As a result, the Court holds their documents to
19 a “less stringent standard[] than formal pleadings drafted by lawyers.” Estelle v. Gamble, 429
20 U.S. 97, 106 (1976). Indeed, the Court construes pro se pleadings liberally and in that party’s
21 favor. See Erickson v. Pardus, 551 U.S. 89, 94 (2007). That leeway is limited to the allegations
22 in the pleadings themselves. It does not exempt pro se parties from following the rules of
23 procedure. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995) (pro se parties are still “bound by
24 the rules of procedure”). Accordingly, the Court will only dismiss a pro se complaint if it is clear
25 that “the plaintiff can prove no set of facts” that would entitle her to relief. Estelle, 429 U.S. at
26 106.

27 The Court applies a two-step approach when considering a motion to dismiss. First, it
28 accepts the plaintiff’s well-pleaded factual allegations as true. Legal conclusions or mere recitals

1 of the elements of a cause of action, on the other hand, do not receive the assumption of truth.
2 Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Then, the Court considers whether the remaining
3 factual allegations in the complaint allege a plausible claim for relief. Id. at 679. A claim is
4 plausible if its pleaded facts allow the Court to draw a reasonable inference that the defendant is
5 liable for the alleged misconduct. Id. at 678. The Court assumes the material facts are true and
6 views them in the light most favorable to the plaintiff. Williams v. Gerber Prods. Co., 552 F.3d
7 934, 937 (9th Cir. 2008). Any claim that does not meet that standard must be dismissed.

8 **III. Analysis**

9 The Court's screening order interpreted the allegations of Holloway's complaint as
10 claims for failure to protect against the Lake's Crossing defendants, failure to provide adequate
11 medical care against Dr. Hanson, and retaliation against every defendant. Screening Order 8, 9,
12 10. Though the underlying allegations are the same, Holloway's complaint formatted the causes
13 of action slightly differently. She alleged (1) an Eighth Amendment claim for cruel and unusual
14 punishment; (2) a substantive due process claim; and (3) an Eleventh Amendment immunity
15 claim. Compl. at 11, 31, 35. Holloway brings her claims against each defendant in both their
16 individual and official capacities.

17 The Lake's Crossing defendants and Dr. Henson have separately moved to dismiss
18 portions of Holloway's claims. The Lake's Crossing defendants move to dismiss Holloway's
19 substantive due process claim and her immunity claim under the Eleventh Amendment. They did
20 not move to dismiss Holloway's failure to protect or retaliation claims. Dr. Henson joined Lake's
21 Crossing's motion as to Holloway's substantive due process claim. Dr. Henson also moves to
22 dismiss Holloway's claims for inadequate medical care and retaliation. The Court will first
23 evaluate the Lake's Crossing defendants' motion, which only covers the substantive due process
24 and Eleventh Amendment claims. It will then analyze Dr. Henson's motion, covering each of
25 Holloway's claims against the doctor.

26 **A. Lake's Crossing Defendants' Motion to Dismiss**

27 Holloway's complaint alleges that several known and unknown Lake's Crossing
28 employees violated Holloway's substantive due process rights by failing to adequately protect

1 her while she was detained at Lake's Crossing. Holloway brings her claims against each
2 defendant in their individual and official capacities. The Lake's Crossing defendants argue that
3 they cannot be sued in their official capacities. They also argue that Lake's Crossing itself is
4 immune from suit under the Eleventh Amendment, which does not provide Holloway a private
5 right of action. Lake's Crossing is correct.

6 As an initial matter, Holloway cannot sue these defendants in their official capacities, nor
7 can she sue the Lake's Crossing facility because it is immune from suit. The Eleventh
8 Amendment prohibits an individual from suing a non-consenting state in federal court. U.S.
9 Const. amend. XI; Beentjes v. Placer Cty. Air Pollution Contr. Dist., 397 F.3d 775, 777 (2005).
10 That immunity from suit applies to the states themselves as well as to their "agents and
11 instrumentalities." Bd. of Trs. of Univ. of Ala. v. Garrett, 531 U.S. 356, 636 (2001). The
12 Eleventh Amendment only immunizes state agencies from lawsuits; it does not extend to smaller
13 political subdivisions, such as counties or municipalities. Lake Country Estates, Inc. v. Tahoe
14 Reg'l Planning Agency, 440 U.S. 391, 401 (1970).

15 Here, Holloway has not alleged any facts that Lake's Crossing does not qualify for
16 immunity under the Eleventh Amendment, nor could she. Lake's Crossing is the very "agent or
17 instrumentality" for which the Eleventh Amendment provides immunity. Lake's Crossing is a
18 "secure facility of the [Nevada] Division of Public and Behavioral Health." NRS
19 §§ 175.539(5)(b), 433.233(1)(d). The facility provides psychiatric services to defendants with
20 mental disorders and aids the state's determination of whether a criminal defendant is competent
21 to stand trial. It is founded and funded by Nevada law. If that were not enough, any judgment
22 that Holloway receives against Lake's Crossing or against its employees in their official
23 capacities would implicate Nevada public funds. These factors weigh strongly in favor of
24 immunity. See Regents of the Univ. of Cal. v. Doe, 519 U.S. 425, 429 (1997). Therefore, the
25 Court dismisses Holloway's claims against the Lake's Crossing facility and against each
26 defendant in their official capacities.

27 Holloway's stand-alone Eleventh Amendment immunity claim fails for the same reason.
28 The Eleventh Amendment does not provide plaintiffs a private cause of action. See ITSI T.V.

1 Prods., Inc. v. Agric. Ass’n, 3 F.3d 1289, 1291 (9th Cir. 1993). To the contrary, it provides states
2 and certain state agents immunity from suit. Qualifying state entities raise immunity as an
3 affirmative defense. Admittedly, there are circumstances where states surrender their immunity.
4 See, e.g., Sossamon v. Texas, 563 U.S. 277, 290 (Congress may waive a state’s sovereign
5 immunity by a “clear statement in the text of [a] statute [that] ensures that Congress has
6 specifically considered state sovereign immunity and has intentionally legislated on the matter”).
7 However, those circumstances are not present here, and even if they were, a stand-alone
8 Eleventh Amendment claim would not be the vehicle to argue that immunity does not apply.
9 Therefore, because the Eleventh Amendment does not provide a cognizable cause of action, the
10 Court dismisses Holloway’s Eleventh Amendment claim with prejudice.

11 Next, the Lake’s Crossing defendants argue that Holloway’s substantive due process
12 claim fails because the defendants’ conduct does not “shock the conscience.” Dr. Henson joined
13 the Lake’s Crossing defendants’ motion as to Holloway’s substantive due process claim. Joinder,
14 ECF No. 22. The “touchstone of due process” is protection against arbitrary actions of the
15 government. Wolff v. McDonnell, 418 U.S. 539, 558 (1974). The government violates an
16 individual’s substantive due process rights when it exercises government power against the
17 individual without a legitimate governmental objective. See Cty. of Sacramento v. Lewis, 523
18 U.S. 833, 845–46 (1998). Only the most egregious conduct is “arbitrary in the constitutional
19 sense.” Collins v. Harker Heights, 503 U.S. 115, 129 (1992). Indeed, only state action that
20 “shocks the conscience” deprives an individual of substantive due process. Lewis, 523 U.S. at
21 847 (citing Rochin v. California, 342 U.S. 165, 172–73 (1952)). Whether a state actor’s conduct
22 “shocks the conscience” varies from case to case. Id. at 850; Betts v. Brady, 316 U.S. 455, 462
23 (1942). What is clear is that the government’s actions must be more egregious than negligence
24 and must *intend* to cause harm without a legitimate governmental justification. Lewis, 523 U.S.
25 at 855 (emphasis added).

26 Holloway has not met that standard. Her allegations that these defendants failed to keep
27 her safe from other inmates or provided inadequate medical care lack the malicious intent needed
28 to demonstrate a substantive due process violation. At worst, Holloway’s claims demonstrate

1 deliberate indifference to her risk of harm, which is more appropriately remedied under the
2 Eighth or Fourteenth Amendment. See United States v. Lanier, 520 U.S. 259, 272 n.7 (1997)
3 (where a constitutional claim is “covered by a specific constitutional provision, such as the
4 Fourth or Eighth Amendment, the claim must be analyzed under the standard appropriate to that
5 specific provision, not under the rubric of substantive due process”). Accordingly, the Court
6 finds that Holloway has not pleaded sufficient facts to support a violation of her substantive due
7 process rights and dismisses that claim against each defendant.

8 In sum, Holloway has not pleaded sufficient facts to support her substantive due process
9 or Eleventh Amendment claims. Therefore, the Court dismisses those claims entirely. However,
10 the Lake’s Crossing defendants did not move to dismiss Holloway’s failure to protect or
11 retaliation claims. Therefore, those claims survive against the Lake’s Crossing defendants.

12 **B. Dr. Henson’s Motion to Dismiss**

13 Having joined Lake’s Crossing’s motion to dismiss Holloway’s substantive due process
14 and immunity claims, Dr. Henson moves separately to dismiss Holloway’s retaliation and
15 inadequate medical care claims. Holloway’s claims arise out of two distinct events during her
16 confinement. The retaliation claim arises out of Dr. Henson’s role in Lake’s Crossing’s decision
17 to move Holloway from her assigned bedroom to a video-surveilled room after she filed her first
18 grievance. Holloway believes that Dr. Henson and others only elected to move her to retaliate for
19 the grievance she filed. Second, Holloway claims that Dr. Henson violated her Fourteenth
20 Amendment right to receive adequate medical care based on the doctor’s administration of anti-
21 psychotic drugs, which caused her to faint and hit her head. Holloway claims that Dr. Henson
22 maliciously administered an abnormally high dose of the drug, knowing that it would cause
23 unwanted side effects.

24 Dr. Henson counters that the decision to move Holloway to a video-monitored room was
25 not retaliatory. He argues that the move was not an adverse action and that Holloway does not
26 allege that the move lacked a legitimate correctional goal. As for Holloway’s claim of inadequate
27 medical care, Dr. Henson was under court order to administer the drug. The doctor also points
28 out that Holloway agrees that the dose he administered is considered a “starting dose.”

1 Alternatively, Dr. Henson moves to dismiss Holloway's medical care claim inasmuch as it is a
2 claim for medical malpractice because she failed to file an expert affidavit as required by NRS
3 § 41A.071.

4 *1. Retaliation*

5 An inmate's right to contest the conditions of his confinement is protected by the First
6 Amendment. Without that protection, inmates would be left without adequate recourse for
7 injustices suffered during their confinement. Rhodes v. Robinson, 408 F.3d 559, 567 (9th Cir.
8 2004). There are four elements to a retaliation claim under the First Amendment in the prison
9 context: (1) that a state actor took an adverse action against the detainee; (2) because of (3) that
10 detainee's protected conduct, and that the action (4) chilled the detainee's exercise of his First
11 Amendment rights; and (5) the action did not reasonably advance a legitimate correctional goal.
12 Id. at 567–68. The state action need not completely chill or prevent the detainee from speaking; it
13 is enough if the state action would chill a reasonable person from First Amendment activities. Id.
14 at 568–69.

15 Holloway's retaliation claim began with Lake's Crossing's decision to move her to a
16 video-monitored room. It also includes the Lake's Crossing defendants' actions after that
17 decision, which include physically forcing her into the new room, stripping her naked, and later
18 withholding her personal mail. The portion of the claim against Dr. Henson is limited to his role
19 in the decision to move Holloway to the video-surveilled room. Holloway has not alleged that
20 Dr. Henson was involved in withholding her belongings or physically forcing her into the new
21 room. Holloway has not alleged that Dr. Henson elected to move her because she filed a
22 grievance, nor does she claim that the decision lacked a legitimate correctional purpose. There is
23 no allegation that Dr. Henson was even aware that Holloway filed a grievance before he voted to
24 move her to the video-monitored room. The extent of Holloway's allegation is that Dr. Henson
25 was "assigned to her caseload," and that a group of caregivers "came up with the decision to
26 move [her] into a room with a camera." Compl. at 21. From there, Holloway's dispute was with
27 her social worker Vikki Erickson, who allegedly told Holloway she was being moved because
28 her complaints were "becom[ing] a problem." Id. Holloway does not allege that Dr. Henson even

1 knew there was a correlation between her grievance and subsequent move.

2 Similarly, Holloway does not allege any facts to suggest that Dr. Henson's part in the
3 decision to move her lacked a legitimate correctional goal. At the time, Holloway already
4 complained that other inmates had broken into her room (*id.* at 18), had assaulted her in her room
5 (*id.* at 16), and had stolen her property from her room (*id.* at 18). Considering Holloway's
6 constant run-ins with other detainees in her bedroom, the Lake's Crossing staff could very well
7 have had a legitimate correctional purpose in its desire to monitor what was happening in
8 Holloway's room. Yet, Holloway does nothing to contest that fact. The closest Holloway comes
9 to alleging a lack of correctional purpose is her isolated interaction with social worker, Vikki
10 Erickson. Erickson allegedly told Holloway that her reports of abuse at Lake's Crossing was a
11 problem for her. Holloway's brief interaction with Erickson does not show that Dr. Henson
12 lacked a legitimate correctional goal when—and if—he decided to move Holloway to the
13 surveilled room. Accordingly, Holloway has not pleaded sufficient facts to support her claim for
14 retaliation against Dr. Henson, and that claim is dismissed.

15 *2. Inadequate Medical Care*

16 Next, Holloway alleges that Dr. Henson deprived her of her Fourteenth Amendment right
17 to adequate medical care by administering a dangerous dose of anti-psychotic drugs that caused
18 her harm. On August 8, 2016, Dr. Henson administered the first dose of an anti-psychotic drug
19 that he was court ordered to administer. Compl. at 27. He administered ten milligrams of the
20 drug. Holloway experienced a reaction to that dosage, which caused her to faint. *Id.* She asked
21 Dr. Henson to decrease the dosage and gradually increase it, but he declined. *Id.* Dr. Henson's
22 initial dose and his refusal to lower that dose, Holloway claims, deprived her of her right to
23 adequate medical care.

24 The Fourteenth Amendment guarantees pretrial detainees constitutionally adequate
25 healthcare during their detention. Conn v. City of Reno, 591 F.3d 1081, 1094 (9th Cir. 2010),
26 cert. granted, judgment vacated sub nom. City of Reno v. Conn, 563 U.S. 915 (2011), opinion
27 reinstated, 658 F.3d 897 (9th Cir. 2011). A state official's deliberate indifference to a detainee's
28 serious medical needs deprives the detainee of his Fourteenth Amendment rights. Farmer v.

1 Brennen, 511 U.S. 825, 828 (1994). A serious medical need exists where failure to provide
2 medical treatment “could result in further significant injury or the unnecessary and wanton
3 infliction of pain.” Conn, 591 F.3d at 1095.

4 There are four elements to Holloway’s claim: (1) the defendant made an intentional
5 decision with respect to the plaintiff’s conditions of confinement; (2) those conditions subjected
6 the plaintiff to a risk of serious harm; (3) the defendant did not take reasonable measures to abate
7 the risk even though a reasonable official would have taken such measures; and (4) by not taking
8 those measures, defendants caused plaintiff’s injuries. Gordon v. Cty. of Orange, 888 F.3d 1118,
9 1124–25 (9th Cir. 2018). This is an objective analysis and requires more than mere negligence.
10 Id. at 1125. Thus, Holloway must “prove more than negligence but less than subjective intent—
11 something akin to reckless disregard.” Castro v. Cty. of Los Angeles, 833 F.3d 1060, 1071 (9th
12 Cir. 2016).

13 Here, Holloway has not alleged that Dr. Henson made an intentional decision regarding
14 the conditions of her confinement or, if he did, that the decision was not reasonable. To be clear,
15 Dr. Henson did not make the decision to medicate Holloway on his own. Compl. at 27
16 (Holloway began taking anti-psychotic drugs, which were “court ordered by the judge”). Under
17 the order, Dr. Henson administered ten milligrams of the drug, and Holloway fainted. Id. Dr.
18 Henson refused to adjust the dosage, but according to Holloway, he did not need to. Holloway
19 agrees that doctors should administer between five and ten milligrams of the drug to first-time
20 patients and then gradually increase the dosage. Id. Dr. Henson administered the high end of the
21 appropriate first-time dose to her. Additionally, the fact that Holloway did not suffer any other
22 side effects with the drug further supports Dr. Henson’s refusal to reduce the dosage. Given that
23 Dr. Henson started Holloway out on the appropriate dose, and she did not have any lasting side
24 effects from the drug, a reasonable psychiatrist would not have considered Holloway’s case a
25 high degree of risk. Therefore, Holloway has failed to show that Dr. Henson was deliberately
26 indifferent to her medical needs.

27 Alternatively, Dr. Henson moves to dismiss Holloway’s medical-care claim under NRS
28 § 41A.071. Section 41A.071 requires a plaintiff in a medical malpractice action to submit an

1 expert affidavit with the complaint to establish the necessary standard of care. The statute is
2 clear. The Court “shall dismiss” without prejudice any medical malpractice claim that is filed
3 without the necessary affidavit. NRS § 41A.071. Although Holloway styled her medical-care
4 claim under the Fourteenth Amendment, the substance of the claim is closer to professional
5 negligence. See Humboldt Gen. Hosp. v. Sixth Jud. Dist. Ct., 376 P.3d 167, 169 (Nev. 2016)
6 (interpreting a battery claim as a claim for medical malpractice). Holloway failed to file an
7 expert affidavit under NRS § 41A.071. Therefore, inasmuch as Holloway’s claim is for medical
8 malpractice, the Court must dismiss it.

9 **C. Holloway’s Motion to Amend**

10 Finally, Holloway moves for leave to again amend her complaint to add the identities of
11 previously unknown Doe defendants and to present “additional counts of [her] civil rights”
12 complaint. Mot. to Amend 1, ECF No. 30. The Court’s screening order permitted Holloway to
13 substitute the identities of the Doe defendants as she learns them. See Screening Order at 12.
14 Therefore, the Court grants Holloway’s motion to amend inasmuch as it intends to assign names
15 to the unknown Doe defendants.

16 The Court denies the remainder of Holloway’s motion without prejudice for failure to
17 attach a proposed amended complaint. Once a party has exhausted its amendment as a matter of
18 course, it may not further amend the complaint without consent of the opposing party or leave of
19 the Court. Fed. R. Civ. P. 15(a)(2). Generally, leave to amend is freely given, but the Court may
20 deny amendment if it would unnecessarily delay the case, would cause undue prejudice, would
21 fail to cure the deficiencies of the prior complaint, or would be futile. Foman v. Davis, 371 U.S.
22 178, 182 (1962). Although Holloway is a pro se party, and the Court liberally construes her
23 filings, she still must follow the rules of procedure. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir.
24 1995). Local Rule 15-1(a) requires the party seeking amendment to “attach the proposed
25 amended pleading to a motion seeking leave of the court to file an amended pleading.” That
26 requirement is especially important where, as here, the Court is deciding a motion to dismiss,
27 because the proposed amendment may correct the deficiencies in the operative complaint.
28 However, because Holloway failed to attach her proposed amendment, the Court cannot tell

1 whether allowing amendment would be fruitful or futile. Additionally, granting Holloway's
2 motion to amend would cause undue delay as she will likely move to amend her complaint again
3 to remedy the pleading deficiencies set out in this order. Therefore, the Court denies Holloway's
4 motion to amend without prejudice.

5 **IV. Conclusion**

6 Accordingly, IT IS HEREBY ORDERED that the partial Motion to Dismiss (ECF No.
7 21) filed by Lake's Crossing defendants Abby, Debbie, Dillinger, Eric, Kenny, Louis, Matthew,
8 Seal, Steven, and Lake's Crossing Mental Health Center, to which Dr. H. Hale Henson joined
9 (ECF No. 22) is **GRANTED**. Plaintiff Lakeisha Holloway's substantive due process and
10 Eleventh Amendment claims are **DISMISSED**.

11 IT IS FURTHER ORDERED that defendant Dr. H. Hale Henson's Motion to Dismiss
12 (ECF No. 24) is **GRANTED**;

13 IT IS FURTHER ORDERED that Holloway's Motion for Leave to Amend Her
14 Complaint (ECF No. 30) is **GRANTED** in part and **DENIED** in part without prejudice.
15 Holloway may amend her complaint to name the Doe defendants and may again move to amend
16 within thirty days of the entry of this order. Holloway is directed to attach a proposed order to
17 her renewed motion to amend as required by Local Rule 15-1(a);

18 IT IS FURTHER ORDERED that Holloway's Motion for Clarification (ECF No. 31) is
19 **DENIED AS MOOT**.

20 Dated this 25th day of November 2019.

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23 

24 Kent J. Dawson
25 United States District Judge
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